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Attorney for Defendant

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TIM TOTH)	Case No.: 2:13-CV-00372-GMN-VCF
)	
Plaintiff,)	
)	
vs.)	
)	
STEPHENS AND MICHAELS ASSOCIATES,)	
INC.)	
)	
Defendants)	

DEFENDANT'S ANSWER TO COMPLAINT

Defendant, STEPHENS AND MICHAELS ASSOCIATES, INC. ("Defendant"), by and through its counsel of record, Peter Dubowsky, Esq. of the DUBOWSKY LAW OFFICE, CHTD., hereby Answers the Complaint of Plaintiff, TIM TOTH, admitting, denying, and alleging as follows:

JURIDICTION

1. Defendant ADMITS that this Court has jurisdiction over Fair Debt Collection Practices Act actions pursuant to 15 U.S.C. §1692k(d), but denies all the remaining allegations contained in Paragraph 1.

2. Defendant DENIES each and every the allegation contained in Paragraph 2.

3. Defendant ADMITS each and every allegation contained in Paragraph 3.

1 17. Defendant lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations contained in Paragraph 17 and therefore DENIES the same.

3 **RESPONDEAT SUPERIOR LIABILITY**

4 18. Defendant DENIES each and every allegation contained in Paragraph 18.

5 19. Defendant DENIES each and every allegation contained in Paragraph 19.

6 20. Defendant DENIES each and every allegation contained in Paragraph 20.

7 21. Defendant DENIES each and every allegation contained in Paragraph 21.

8 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

9 22. Defendant lacks knowledge or information sufficient to form a belief about the
10 truth of the allegations contained in Paragraph 22 and therefore DENIES the same.

11 23. Defendant lacks knowledge or information sufficient to form a belief about the
12 truth of the allegations contained in Paragraph 23 and therefore DENIES the same.

13 24. Defendant admits the language of 47 U.S.C. §227(a)(1), but denies utilizing the
14 ATDS as defined in that statute.

15 25. Defendant DENIES each and every allegation contained in Paragraph 25.

16 26. Defendant DENIES each and every allegation contained in Paragraph 26.

17 27. Defendant DENIES each and every allegation contained in Paragraph 27.

18 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

19 28. Defendant DENIES each and every allegation contained in Paragraph 28.

20 29. Defendant DENIES each and every allegation contained in Paragraph 29.

21 30. Defendant DENIES each and every allegation contained in Paragraph 30.

22 31. Defendant lacks knowledge or information sufficient to form a belief about the
23 truth of the allegations contained in Paragraph 31 and therefore DENIES the same.

24 32. Defendant DENIES each and every allegation contained in Paragraph 32.

25 33. Defendant DENIES each and every allegation contained in Paragraph 33.

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34. Defendant ADMITS that a debt collector has the burden of showing that it had the consumer's prior express consent to place autodialed or pre-recorded calls to a consumer's wireless telephone, but DENIES making such calls without consent and DENIES the remaining allegations contained in Paragraph 34.

COUNT I
Violations of the FDCPA – 15 U.S.C. § 1662, et seq.

35. The Defendant incorporates by reference all the above paragraphs of this Answer as though fully stated herein.

36. Defendant DENIES each and every allegation contained in Paragraph 36.

37. Defendant DENIES each and every allegation contained in Paragraph 37.

38. Defendant DENIES each and every allegation contained in Paragraph 38.

39. Defendant DENIES each and every allegation contained in Paragraph 39.

40. Defendant DENIES each and every allegation contained in Paragraph 40.

41. Defendant DENIES each and every allegation contained in Paragraph 41.

42. Defendant DENIES each and every allegation contained in Paragraph 42.

43. Defendant DENIES each and every allegation contained in Paragraph 43.

COUNT II
Invasion of Privacy by Intrusion upon Selection and by Revelation of Private Financial Facts to Third Party

44. The Defendant incorporates by reference all the above paragraphs of this Answer as though fully stated herein.

45. Defendant ADMITS the preamble language of 15 U.S.C. §1692(a), but DENIES that any cause of action for alleged "invasion of privacy" exists in this case.

46. Defendant ADMITS the language of 15 U.S.C. §6801(a), but the remaining allegations contained in Paragraph 46.

47. Defendant DENIES each and every allegation contained in Paragraph 47.

1 48. Defendant DENIES each and every allegation contained in Paragraph 48.

2 49. Defendant DENIES each and every allegation contained in Paragraph 49.

3 50. Defendant DENIES each and every allegation contained in Paragraph 50.

4 51. Defendant DENIES each and every allegation contained in Paragraph 51.

5 **COUNT III**

6 **Negligent Violations of the Telephone Consumer Protection Act,**
7 **47 U.S.C. § 227, et seq.**

8 52. The Defendant incorporates by reference all the above paragraphs of this
9 Answer as though fully stated herein.

10 53. Defendant DENIES each and every allegation contained in Paragraph 53.

11 54. Defendant DENIES each and every allegation contained in Paragraph 54.

12 55. Defendant DENIES each and every allegation contained in Paragraph 55.

13 56. Defendant DENIES each and every allegation contained in Paragraph 56.

14 **COUNT IV**

15 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**
16 **47 U.S.C. § 227, et seq.**

17 57. The Defendant incorporates by reference all the above paragraphs of this
18 Answer as though fully stated herein.

19 58. Defendant DENIES each and every allegation contained in Paragraph 58.

20 59. Defendant DENIES each and every allegation contained in Paragraph 59.

21 60. Defendant DENIES each and every allegation contained in Paragraph 60.

22 61. Defendant DENIES each and every allegation contained in Paragraph 61.

23 WHEREFORE, Defendant, STEPHENS AND MICHAELS ASSOCIATES, INC.,
24 prays that Plaintiff go and take nothing by way of their Complaint, Claims for Relief, and
25 Prayer for Relief, alleged therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Plaintiff's Complaint fails to state any cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Plaintiff granted Defendant prior express consent to place calls to Plaintiff's telephone.

THIRD AFFIRMATIVE DEFENSE

To the extent any FDCPA violation would even exist, the Defendant would not be liable because the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

FOURTH AFFIRMATIVE DEFENSE

Defendant has not violated the laws or regulations of the United States or the State of Nevada with regard to any Plaintiff or any other individual or member of this action.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each alleged cause of action set forth therein, may be barred by the doctrines of accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, and waiver by reason of Plaintiff's conduct, actions and omissions.

SIXTH AFFIRMATIVE DEFENSE

The Defendant did not use an automatic telephone dialing system when calling Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

Neither Defendant nor its servants or agents failed to satisfy any duty owed with regard to Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff brought this action in bad faith and for the purpose of harassment.

NINTH AFFIRMATIVE DEFENSE

Neither Defendant nor its servants or agents caused Plaintiff to suffer any emotional distress, indignity, embarrassment, humiliation, annoyance, or inconvenience or caused any harm, loss or damages whatsoever to Plaintiff.

TENTH AFFIRMATIVE DEFENSE

Neither Defendant nor its servants or agents failed to satisfy any duty owed with regard to Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

Pursuant to F.R.C.P 11, as amended, all possible affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Defendant's Answer; therefore, Defendant reserves the right to amend his Answer to allege additional affirmative defenses if subsequent investigation warrants.

Dated: March 29, 2013

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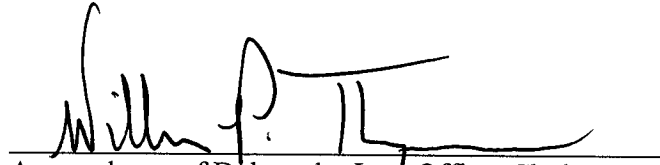
By: 

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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of March, 2013 the DEFENDANT'S ANSWER TO COMPLAINT was deposited in a sealed envelope, postage pre-paid, in the United States Mail, addressed as follows:

George Haines, Esq.
HAINES & KRIEGER, LLC
5041 North Rainbow Boulevard
Las Vegas, NV 89130
Attorney for Plaintiff


An employee of Dubowsky Law Office, Chtd.

DUBOWSKY LAW OFFICE, CHTD.